FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 376/2007
(Karimkhan Umarkhan (Dead) & 2) Abdul Razak Sheikh Hasan & others **VERSUS** Abdul Ajiz Mohammad Shah & others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. Shelat, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 23rd August, 2007.

Heard Shri Shelat, the learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for a declaration that the judgment passed by the Assistant Judge, Amravati in Civil Suit No.9-A/59 and confirmed by the High Court in Second Appeal No.280/1961 be declared as not binding upon the plaintiffs and defendant no.12 as it was obtained by fraud by the defendants. It was the case of the plaintiffs that the suit property was in possession of the defendant nos.1 to 11 at the time of the filing of the suit. According to the plaintiffs, the property was the property of Jama Masjid which is the registered public trust under the Madhya Pradesh

Public Trust Act. The Registrar of public trust, Amravati passed an order that the Jama Masjid along with the property i.e. Nazool plot no.23 having an area of 26801 sq.ft. be registered as public trust. The said property is the subject matter of the suit.

One late Mohammad Shah, the father of defendant nos.1 to 3 and 5 to 7 and husband of defendant no.4 filed the suit against a decision of the Registrar of public trust Amravati in Civil Suit No.9-A/59 in the Court of Assistant Judge, Amravati. According to the plaintiff, the finding of the Registrar of public trust was conclusive and the civil Court did not have jurisdiction or authority to consider the question involved in Civil Suit No.9-A/ 59 as the said question could be determined only under the Madhya Pradesh Public Trust Act, 1951. The suit filed by Mohammad Shah was, however, decreed and it was held that the suit property was the private property of late Mohammad Shah. The decision passed by the Assistant Judge, Amravati was challenged by the State of Maharashtra before the District Judge, Amravati in

Regular Civil Appeal No.118/1960. The appeal was allowed. The appellate Court's judgment was, however, challenged by late Mohammad Shah in the High Court Bench at Nagpur in Second Appeal No. 280/1961. The High Court allowed the appeal filed by Mohammad Shah and restored the decree passed by the Assistant Judge, Amravati. It was the case of the plaintiff that late Mohammad Shah was merely Pesh Imam of the Jama Masjid and could not have been declared to be the owner of the suit property. It was then pleaded by the plaintiffs that the panch committee which was comprising of the members of the managing committee of the mosque should have contested the suit filed by Mohammad Shah but, the same was not contested by them. They fraudulently allowed the decree to be passed in favour of late Mohammad Shah. They deliberately and with ulterior motive refrained from leading any evidence about possession of the defendant no.12 over the mosque. It was pleaded by the plaintiff that because of the fraud played by the panch committee, property

belonging to the trust was declared as private property of late Mohammad Shah. On the basis of the aforesaid pleadings, the relief of declaration was sought by the plaintiff.

The defendants contested the suit of the plaintiff and denied the claim of the plaintiff. They asserted their ownership over the suit property. It was admitted that Mohammad Shah was the Pesh Imam of the property but, it was denied that he was permitted to reside in the house situated to south of the mosque. The defendants pleaded that the evidence was led by the panch committee before the Court and there was no question of commission of any fraud by the panch committee.

The trial Court framed the issues and the parties tendered evidence on the same. On a consideration of the evidence tendered by the parties, the trial Court came to a conclusion that the plaintiff failed to prove that they were entitled for the declaration sought in the suit. The Court held that the plaintiffs failed to prove that the judgment passed by

the Assistant Judge, Amravati in Civil Suit No.9-A/59 and confirmed by the High Court in Second Appeal No. 280/1961 was obtained by fraud. The Court further held that the suit filed by the plaintiffs was not maintainable. The judgment passed by the trial Court was challenged by the plaintiffs in a first appeal. The Ad-hoc District Judge, Achalpur, however, by a judgment dated 24.11.2006 dismissed the appeal filed by the plaintiffs and confirmed the findings recorded by the trial Court.

The judgments passed by both the Courts are challenged in the present second appeal. It is submitted on behalf of the appellant that the Courts ought to have considered that the panch committee/managing committee of the defendant no. 12 mosque, fraudulently permitted Mohammad Shah to obtain a decree from the Assistant Judge, Amravati declaring his to his ownership over the suit property. According to the counsel for the appellant, there was an entry made in the record of rights in respect of the property in the name of defendant no.12 mosque and

the entry could have been corrected only by following the procedure under the Central Provinces Land Revenue Act, 1917 and the provisions of the Act, specially Section 220 thereof barred the jurisdiction of the civil Court to reopen the entries of record of rights. According to the counsel for the appellant, the revenue entries have become final and conclusive, and therefore, the Assistant Judge, Amravati could not have granted a declaration in favour of Mohammad Shah in a civil suit filed by Mohammad Shah as the civil Court had no jurisdiction to decide the question which was involved in the civil suit filed by Mohammad Shah. The counsel for the appellant then relied on the decisions reported in **1998(2) SCC 642**, **2004(8) SCC 706** and **AIR 1956 SC 713** to substantiate the aforesaid submissions.

I have perused the plaint, the provisions of the Central Provinces Land Revenue Act, 1917 as also the judgments delivered by both the Courts. Both the Courts have arrived at a categorical finding of fact that the plaintiffs have failed to prove that the panch

committee or the managing committee of the mosque had fraudulently permitted Mohammad Shah to obtain a decree of declaration of his ownership over the suit property by not defending the suit. Both the Courts observed that the panch committee had in fact denied the claim of the plaintiff, Mohammad Shah, in the earlier suit and the State was also a contesting party to the litigation. Both the Courts further held that the plaintiffs have failed to prove that the fraud was so intrinsic or collateral. Except for the bare words of Quazi Mohammad and Abdul Aziz, there is nothing on record to show that a member of the panch committee by name Syed Amir had an intimate relationship with Mohammad Shah. The Courts also observed that there was absence of cogent evidence or for that matter any evidence on record to show how fraud was committed by the panch committee/managing committee of the mosque. The findings recorded by both the Courts on the absence of fraud by the panch committee are pure findings of fact which do not give rise to any substantial question of law.

The other submission made on behalf of the appellant about the revenue entries being final and conclusive and about applicability of the provisions of the Central Provinces Land Revenue Act, 1917 cannot be considered at this stage as the appellants/plaintiffs had not pleaded the same before the trial or the first appellate Court. In fact, the plaintiffs/appellants had pleaded that the Assistant Judge, Amravati had no jurisdiction to try the Civil Suit No.9-A/59 in view of the provisions of the Madhya Pradesh Public Trust Act. It was not the case of the plaintiff at any point of time that the revenue entries were recorded under the Central Provinces Land Revenue Act, 1917 and since they were final and conclusive, the civil court did not have jurisdiction to try the suit filed by Mohammad Shah. In fact, the other submissions raised on behalf of the appellant, except the submission of fraud, are the pleadings or submissions which should have been raised by the defendants in the earlier suit filed by Mohammad Shah. By raising such pleas at the second appellate stage, the appellant is trying to reopen a

decree on grounds other than the ground of fraud though the decree passed by the Assistant Judge, Amravati is challenged by the plaintiffs only on the ground of the fraud played by the panch committee/managing committee of the mosque. It is rightly observed by both the Courts that there is nothing on record to show that the panchas did not defend the suit filed by Mohammad Shah properly and in fact, not only the panchas but the State was also a contesting party in the earlier litigation filed by Mohammad Shah. In the backdrop of these facts and circumstances, the judgments relied on by the appellant to substantiate the aforesaid submissions would hardly be of any assistance to the case of the appellants. The sole ground on which the plaintiffs challenged the decree passed by the Assistant Judge, Amravati in the Civil Suit No.9-A/59 was the fraud played by the members of the panch committee. Since both the Courts have categorically recorded a pure finding of fact that there was hardly any evidence worth the name to prove the fraud played by the

panch committee, the suit filed by the plaintiff/appellants was liable to be dismissed.

Since no substantial question of law arises for consideration in this second appeal and since both the Courts have recorded a pure finding of fact about the non existence of fraud, the second appeal is liable to be dismissed and it is dismissed as such with no order as to costs.

JUDGE

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